IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1331 of 2007

Senthamil Selvi .. Petitioner

Vs

1. The State of Tamil Nadu,
   Rep. by its Secretary to Govt.,
   Prohibition and Excise Dept.,
   Fort St. George, Chennai.

2. The District Magistrate &
   District Collector,
   Nagapattinam District. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.R.Shivakumar

For Respondents: Mr.P.Kumaresan
Additional Public Prosecutor

ORDER

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, wife of the detenue by name Jaisankar, who was detained at Central Prison, Tiruchirppalli, by an order dated 22.7.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Bootlegger, seeks a writ of Habeas Corpus to call for the records in connection with the order of detention passed in C.O.C.No.32 of 2007, to set aside the same and to direct the respondents to produce him before this Court and set him at liberty.

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2. The ground case, which led to the passing of the detention order is that on 1.7.2007 at 5.30 hours, while conducting

prohibition raid at Kiliyanur village, the Inspector of Police, Perambur Police Station, found the detenu selling illicit arrack. On seeing the police party, persons who had come there to consume the illicit arrack took to their heels, but the detenu was apprehended by the police. On the basis of confession statement given by him, a case in Cr.No.392/2007 was registered for offences under Section 4(1)(i) 4(1)(aaa) r/w 4(1-A) of the Tamil Nadu Prohibition Act. The sample of illicit arrack seized was sent for Chemical Analysis and it was found admixed with 7.9 mgs of atropine".

3.The second respondent, taking note of the above ground case and finding that the detenu came to the adverse notice of the authorities in six cases of alike nature, viz.in Crime Nos.199/2004, 435/2004, 501/2004 and 42/2005 on the file of Perambur police station and in Crime Nos.105/2006 and 880/2007, having satisfied that there is compelling necessity to detain the detenu in order to prevent him from indulging in such activities, which are prejudicial to the maintenance of public order and public health, ordered his detention dubbing him as a Bootlegger.

4. The learned counsel for the petitioner challenges the impugned order of detention only on the ground of delay on the part of the detaining authority in sending the remarks to the Government. Hence, we do not propose to go into other aspects of the case.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2.Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3.The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4.Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

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5.5.It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6.Coming to the case on hand, admittedly, objecting to the order of detention dated 22.7.2007, a representation dated Nil was made on behalf of the detenu, which was received by the Government on 8.8.2007. Remarks were called for from the detaining authority on 9.8.2007, who, in turn, called for parawar remarks from the sponsoring authority on 13.8.2007. Even though the detaining authority received the parawar remarks on 22.8.2007, it was sent to the Government only on 10.9.2007, after a delay of 19 days, which is not properly explained. Even excluding the intervening holidays, viz. 25.8.2007, 26.8.2007, 1.9.2007, 2.9.2007, 8.9.2007 and 9.9.2007 (being Saturdays and Sundays), there is delay of 13 days in sending the remarks, which is admittedly unexplained and inexcusable. Thereafter, the file was submitted on 17.9.2007 and it was considered by the Under Secretary and the Additional Secretary on 18.9.2007. The Minister concerned dealt with the file on 19.9.2007 and rejected the same. The rejection letter was prepared on 24.9.2007 and sent to the detenu on 25.9.2007 and served on 27.09.2007.

7.At this juncture, a reference to the decision of the Apex

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Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8.That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

9.In the instant case, there is delay of 13 days on the part of the detaining authority in sending the remarks to the Government, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition.

In the result, the order of detention is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To:

1. The Secretary to Government
   of Tamil Nadu, Prohibition and
   Excise Department, Fort St. George,
   Chennai 600 009.

2. The District Magistrate &
   District Collector,
   Nagapattinam District.

3. The Superintendent
   Central Prison, Tiruchirppalli.

4. The Public Prosecutor,
   High Court, Madras.

5.The Joint Secretary to Govt. Public (Law and Order)
Fort St. George, Chennai -9.

KM (CO)
km/17.12.

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